

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN ESPINOZA, an individual,

Plaintiff,

vs.

CITY OF IMPERIAL, a public entity; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. 07cv2218-LAB (RBB)

**ORDER ON MOTION TO STAY
OR ABSTAIN FROM ACTION**

I. Background

John Espinoza, a former police officer, alleges he was wrongfully terminated by the City of Imperial following a psychological examination. He seeks both damages and injunctive relief based on claims of disability discrimination, failure to accommodate, and retaliation under the Americans With Disabilities Act.

Espinoza first challenged his termination through an administrative hearing before the City Council that began on November 15, 2007. Five days later, Espinoza filed this action. Although the administrative hearing totaled just 3 days, the City Council did not reach a decision until April 29, 2009. It upheld the termination. On July 24, 2009, Espinoza filed a Petition for Writ of Administrative Mandamus, seeking review of the decision of the City Council to uphold his termination. By then, Espinoza had already amended his federal

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1 complaint to include a civil rights violation claim under 18 U.S.C. § 1983, as well as a state
2 claim under California's Fair Employment and Housing Act (FEHA).

3 Now before the Court is Defendants' motion to stay or abstain from action.
4 Defendants urge this Court to abstain from hearing this case under the abstention doctrines
5 of either *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), or
6 *Younger v. Harris*, 401 U.S. 37 (1971). Specifically, Defendants claim that state proceedings
7 were initiated prior to the filing of the original federal complaint in this case, that the state
8 proceedings arise out of the same factual situation and involve the same legal issues as this
9 case, and that the state proceedings were therefore pending when the federal complaint was
10 filed.

11 Abstention is not warranted, and for the reasons set forth below, Defendants' motion
12 is **DENIED**.

13 **II. Discussion**

14 **A. Colorado River Abstention**

15 The Supreme Court has recognized that under extraordinary circumstances, federal
16 courts may stay cases involving questions of federal law where a concurrent state action is
17 pending in which the *identical issues* are raised. *Colorado River*, 424 U.S. at 815 (1976).
18 Abstention is "an extraordinary and narrow exception to the duty of a district court to
19 adjudicate a controversy properly before it." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706,
20 728 (1996); *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350,
21 359 (1989) (explaining that abstention remains the exception, not the rule). Typically, federal
22 courts have a "virtually unflagging obligation" to exercise the jurisdiction conferred upon
23 them. *Colorado River*, 424 U.S. at 813.

24 The Court made clear in *Colorado River* that "[g]enerally . . . the pendency of an
25 action in the state court is no bar to proceedings concerning the same matter in the Federal
26 court having jurisdiction." *Id.* at 817. It also identified a number of factors that federal courts
27 may take into account in deciding whether or not to invoke the abstention doctrine in
28 extraordinary circumstances, mindful that there is no rule requiring federal court abstention

1 in a given case. Those factors include: (1) whether either court has assumed jurisdiction
2 over any property at issue; (2) possible inconvenience of the federal forum; (3) the
3 desirability of avoiding piecemeal litigation; (3) and the order in which jurisdiction was
4 obtained by the concurrent forums. See *id.* at 818. Since *Colorado River* was decided, the
5 Court has added two more factors that bear on the abstention question: whether state or
6 federal law controls and whether the state proceeding is adequate to protect the parties'
7 rights. *Moses H. Cone Memorial Hosp. v. Mercury Construction Corp.*, 460 U.S. 1, 23-27
8 (1980). No one factor is determinative, and judgments should take into account both the
9 obligation to exercise jurisdiction and the combination of factors weighing against the
10 exercise of jurisdiction. *Colorado River*, 424 at 818-19.

11 Of these six factors, Defendants make the most of the fact that Espinoza sought
12 administrative review of his termination just five days before filing this action. The order in
13 which jurisdiction was obtained by the concurrent fora is just one factor to consider, however,
14 and the Court doubts that an administrative review by a city council is the type of concurrent
15 state court action contemplated by *Colorado River*, let alone whether this is the kind of
16 *exceptional circumstance* that warrants abstention. Espinoza's claims were never pending
17 before a state court until July 24, 2009, when he sought a writ of mandamus from the state
18 superior court to review the City Council's decision, and when his federal action had been
19 pending for over a year. Defendants' assertion that the state proceedings in this case are
20 already "far advanced" is undermined by the fact that the City Council's hearing totaled just
21 three days over 2007, 2008, and 2009. (Dkt. 59, p. 1-2). Furthermore, Defendants do not
22 argue that any of the other factors enumerated in *Colorado River* support a finding that this
23 is an "extraordinary circumstance" warranting a stay.

24 Defendants also fail to recognize the general reluctance of district courts to abstain
25 from hearing cases in which monetary damages are sought under federal civil rights laws
26 such as 42 U.S.C. § 1983. *Martinez v. Newport Beach City*, 125 F.3d 777, 785 (9th Cir.
27 1997). The § 1983 cause of action was meant to provide litigants with a federal forum in
28 which to vindicate federal rights when relief may not be adequate in state courts. See *id.* at.

1 782. In this case, Espinoza amended his original complaint on March 12, 2008 — again,
2 well before this case landed in state court — to include a claim under 42 U.S.C. § 1983.
3 (Dkt. 3, p. 19.)

4 Civil rights actions such as the one that Espinoza brings here are precisely the kinds
5 of claims that federal courts have found to be ideally suited for federal jurisdiction. The mere
6 fact that a three day administrative hearing was conducted over a three-year time span, and
7 a writ of mandamus was filed in state court earlier this year is insufficient to justify abstention
8 under the *Colorado River* doctrine. Espinoza received a right to sue letter from the E.E.O.C.
9 and his complaint is rightly before this Court.

10 **B. Younger Abstention**

11 Defendants also contend that if this Court denies abstention under *Colorado River*,
12 it should abstain from hearing the case under the *Younger* abstention doctrine. In *Younger*
13 *v. Harris*, the Supreme Court held that federal courts may not enjoin pending state court
14 criminal proceedings, even if there is an allegation of a constitutional violation and even
15 though all jurisdictional requirements for federal court are met. *Id.* Since *Younger* was
16 decided, the Court has expanded the doctrine beyond the criminal context, applying it to
17 prevent federal courts from interfering with state civil and administrative proceedings as well.
18 See, e.g., *Rizzo v. Goode*, 423 U.S. 363 (1976) (federalism considerations limit federal court
19 review of police department practices).

20 Defendant relies on a four-factor test used by the Ninth Circuit in *Gilbertson v.*
21 *Albright*, 381 F.3d 965, 977–78 (9th Cir. 2004) (en banc), to show that *Younger* abstention
22 is warranted here. Under the test, a federal civil proceeding would interfere with a state
23 proceeding contrary to the dictates of *Younger* if: (1) a state-initiated proceeding is ongoing;
24 (2) the proceeding implicates important state interests; (3) the federal plaintiff is not barred
25 from litigating federal constitutional issues in the state proceeding; and (4) the federal court
26 action would enjoin the proceeding or have the practical effect of doing so. *Id.* Defendants
27 argue that each one of these factors is met in this case. The Court disagrees.

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1 With regard to the first factor enumerated in *Gilbertson* — whether a state-initiated
2 proceeding is ongoing — the fact-finding portion of Espinoza’s administrative review has
3 concluded. He is now appealing the decision of the City Council in state court, and it is
4 unlikely that the state court will add to the factual findings of the administrative hearing at the
5 appellate phase. Therefore, the disruption of state proceedings is likely to be minimal, and
6 the only way in which the matter is ongoing is that the request for mandamus remains on the
7 docket of the state court.

8 Secondly, Defendants’ argument that this proceeding implicates important state
9 interests is not persuasive. Defendants argue that the important state issue in this case is
10 the elimination of disability discrimination, and the public entity’s ability to terminate a police
11 officer found to be unfit for duty. (Dkt. 59, p. 7.) However, under Defendants’ own authority,
12 the Ninth Circuit has stated that the state interests involved in civil proceedings meriting
13 *Younger* abstention are “akin to those involved in criminal prosecutions.” *Gilbertson*, 381
14 F.3d at 975. Defendants do little to liken the interests at issue here to the important state
15 interests typically involved in criminal proceedings.

16 With regard to the opportunity of the plaintiff to litigate constitutional issues in the state
17 proceedings, the Court believes that because Espinoza has asserted a federal civil rights
18 claim under § 1983, he should be entitled to argue his claim in federal court. Plaintiffs are
19 not precluded from bringing § 1983 claims in federal court just because state proceedings
20 might be adequate for resolving those claims. This Court is likely to be better suited to
21 determine whether the Defendants violated Espinoza’s constitutional rights. The City
22 Council’s administrative review was likely more concerned with determining whether or not
23 Defendants’ termination of Espinoza was pretext for discrimination on the basis of perceived
24 disability, which is separate from the constitutional claims raised by Espinoza’s § 1983
25 action.

26 Finally, the Court does not believe that continued federal jurisdiction over Espinoza’s
27 case would have the same practical effect as an injunction against the state proceedings.
28 Defendants argue that the simultaneous existence of this action and the state proceeding

1 raises the “specter of inconsistent rulings.” (Dkt. 59, p. 9.) The Court is perplexed as to how
2 inconsistent rulings would have the practical effect of enjoining the state proceeding. Rather,
3 the “specter of inconsistent rulings” appears to be more threatening to Espinoza’s interests
4 than to the interests of the state in maintaining jurisdiction over the case. If in fact
5 Espinoza’s proceedings in state court come to a resolution before his federal action does—a
6 likely result—he risks being bound by the judgment of the state court under the doctrines of
7 res judicata or collateral estoppel. *See, e.g., AmerisourceBergen Corp. v. Roden*, 495 F.3d
8 1143, 1152 (9th Cir. 2007) (recognizing that abstention not warranted where federal action
9 does not enjoin state proceeding, although collateral estoppel may bind litigant to state court
10 judgment).

11 Here, Espinoza seeks primarily compensatory and punitive damages—remedies that
12 are not the virtual equivalent of an injunction. If Espinoza sought primarily declaratory relief,
13 the Court might be more willing to abstain or stay under *Younger* because such relief might
14 be tantamount to an injunction against the state proceedings. However, Espinoza seeks
15 primarily monetary relief under § 1983 to compensate him for his termination, and the Court
16 has an unflagging obligation to hear claims that are properly before it. *See id.* at 1153.

17 Even if the Court were to decide Espinoza’s claim in a way that would have preclusive
18 effect on the state court’s review of the decision of the city council, abstention under *Younger*
19 would not be necessary. The Ninth Circuit in *AmerisourceBergen* noted that “the possibility
20 of a race to judgment is inherent in a system of dual sovereigns, and in the absence of
21 exceptional’ circumstances . . . that possibility alone is insufficient to overcome the weighty
22 interest in the federal courts exercising their jurisdiction in cases properly before them.” *Id.*
23 at 1151, *quoting Colorado River*, 424 U.S. at 818. The decision further explained “the
24 Supreme Court has rejected the notion that federal courts should abstain whenever a suit
25 involves claims or issues simultaneously being litigated in state court merely because
26 whichever court rules first will, via the doctrines of res judicata and collateral estoppel,
27 preclude the other from deciding that claim or issue.” *Id.* at 1151. This Court is free to

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1 resolve Espinoza's claims on its own timing without reference to the proceedings in the state
2 court.

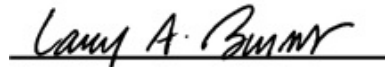
3 Thus, the Court does not see the need to stay this case under the *Younger* abstention
4 doctrine, given the fact that no federal injunction has issued and Defendants have not
5 offered anything more than a conclusory assertion that federal jurisdiction here would
6 effectively enjoin the state proceeding in a way that runs afoul of the *Younger* doctrine.

7 **III. Conclusion**

8 The *Colorado River* and *Younger* abstention doctrines are no help to Defendants.
9 Congress passed 42 U.S.C. § 1983 to allow plaintiffs to pursue their federal civil rights claims
10 in federal courts. Defendants' Motion to Stay or to Abstain from Action is **DENIED**, and their
11 motion for summary judgment remains calendared for February 1, 2010.

12 **IT IS SO ORDERED.**

13 DATED: November 19, 2009

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15 **HONORABLE LARRY ALAN BURNS**
16 United States District Judge
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